

Message

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Sent: 5/9/2017 2:26:44 PM
To: Hengst, Benjamin [Hengst.Benjamin@epa.gov]
Subject: FW: Inside EPA "White House, Industry Appear to Agree on Delaying Vehicle GHG Rules"

From: Moran, Robin
Sent: Tuesday, May 09, 2017 10:21 AM
To: Charmley, William <charmley.william@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Cook, Leila <cook.leila@epa.gov>; Simon, Karl <Simon.Karl@epa.gov>; Olechiw, Michael <olechiw.michael@epa.gov>; Alson, Jeff <alson.jeff@epa.gov>; Snapp, Lisa <snapp.lisa@epa.gov>
Subject: Inside EPA "White House, Industry Appear to Agree on Delaying Vehicle GHG Rules"

FYI, from yesterday. <https://insideepa.com/daily-news/white-house-industry-appear-agree-delaying-vehicle-ghg-rules>

White House, Industry Appear To Agree On Delaying Vehicle GHG Rules

May 08, 2017

The White House and the auto industry appear to be in agreement on the broad goal of delaying compliance with EPA's light-duty vehicle fuel economy and greenhouse gas standards currently slated for model years 2022-2025, rather than easing the standards, though the process for executing such a delay is unclear and officials could still face significant hurdles.

"I have been told, fairly directly, that the White House has made a decision to delay the 2022-2025 standards," says one source with knowledge of the decision.

A delay -- rather than weaker standards -- is something that Alliance for Automobile Manufacturers CEO Mitch Bainwol publicly called for last month. At an April 11 forum alongside the New York auto show, he said, "The talk of rollback is fallacious. What we are talking here is the nature of the [compliance] slope."

He added that the industry will "get to the Obama numbers . . . We will get beyond the Obama numbers. The question is when and how."

But Bainwol's comments are also not the first time that an auto industry executive has suggested the need for more time. Fiat-Chrysler CEO Sergio Marchionne called for a delay in early 2015, saying: "All of us are going toward a relaxation of the timeline. The question is the rate of change you're going to roll out."

The White House press office did not respond to a request for comment.

Another source familiar with the rules says it is not clear that the administration has settled on a delay as its preferred course of action, in part given a continued slow pace of nominating political appointees at federal agencies and other factors.

The source, however, agrees that some kind of compliance extension "is where I think this is headed."

A compliance delay serves the interests of many automakers, the source says, in that “they can sell it as [a] modest” change to the rules, while an explicit weakening of the GHG requirements is “toxic to their reputation.”

Even so, the source familiar with the rules says “I don't think there is a uniform position” among the automakers on changes to the rules. The source notes, for example, that Fiat-Chrysler has been the most outspoken in seeking relief.

One environmentalist, while not supporting a delay, notes that option is more straightforward and “transparent,” compared with separate legislative efforts to better “harmonize” the EPA and Transportation Department (DOT) programs.

Sen. Jim Inhofe (R-OK) is pushing draft legislation that would address portions of a June 2016 petition from the auto sector to EPA and NHTSA, which urged the agencies to take a range of steps to remedy “various inconsistencies” in the two programs.

Despite the apparent recent focus on delaying the standards, this source argues that automakers seem just as focused on the harmonization push, which is “a sneaky way of weakening the rules” by easing the use of credits as a compliance mechanisms, among other things.

It is unclear if either a delay -- in which officials retain the same level of stringency while giving automakers an additional year or two to meet the standards -- or the harmonization efforts could ultimately lead to a compromise between automakers and supporters of the current rules such as California and environmentalists.

Some environmentalists have been cool to the notion of a delay, noting that it would reduce the assumed annual GHG improvement in vehicles, which has long-term consequences for the fleet.

Another significant complicating factor is California's Clean Air Act waiver allowing it to move forward with its own more stringent vehicle GHG standards.

State officials have already adopted MY22-25 standards that are equivalent to those adopted by EPA, and officials there appear unwilling to overhaul their requirements to address industry concerns. That would potentially leave the industry having to comply with a patchwork of requirements, which is anathema to industry that favors a single national program.

“If you delay, you're going back to the two-car problem that instigated the big national negotiation” under the Obama administration and led to the first-ever national GHG and fuel economy standards that covered MY12-16. The Obama EPA and DOT then issued a phase 2 rule that covered MY17-25, with a required mid-term review of the latter portion of the standards to be completed by April 2018.

Procedural Hurdles

The knowledgeable source adds that is also unclear how delaying the MY22-25 standards could be executed successfully. Time consuming Administrative Procedure Act requirements and the recently reopened “mid-term review” of the standards -- expected to add another year to process -- could complicate automakers' need for several years of lead time to comply with the rules.

The Obama EPA just before President Donald Trump's inauguration finalized a determination that the GHG standards for those years should not be changed, finding that automakers are well positioned to meet them at a lower cost than previously estimated. However, the Trump administration announced March 15 that it would reconsider that decision, after automakers complained about the Obama EPA's process leading up to that move and called on it to resume the mid-term review.

EPA must make a new decision on the appropriateness of the MY22-25 standards by April 1. If it decides the standards should be changed, then it would issue new proposed standards for public comment, under terms of the original rule.

But uncertainty over the standards will continue if the mid-term review is delayed, a new proposal is not finalized fast enough to meet automakers' substantial lead-time requirements, or if California disagrees with whatever EPA and DOT decide.

Although EPA Administrator Pruitt recently invited California to work with the agency on the mid-term review, the state appears unlikely to agree to any delay.

California Air Resources Board Chairwoman Mary Nichols has sharply criticized the auto industry for asking the Trump administration to reopen EPA's determination. "What were you thinking? What were you thinking when you threw yourselves on the mercy of the Trump administration to try to solve your problems?" she asked at a March 24 meeting.

More recently, a spokesman for California Gov. Jerry Brown (D) on May 5 cited extensive scientific and technical data supporting the state's current vehicle standards, while reiterating past statements that officials are unlikely to revise their requirements.

"California will take the necessary steps to preserve the current standards and protect the health of our people and the stability of our climate," the spokesman said.

Because California's existing waiver extends through MY25, the Trump EPA would have to rescind the waiver if it is unable to come to terms with the Golden State. Such a move would be unprecedented, experts say, and the state could be in a good position to defend against such a move in court.

DOT Proposal

Yet a second environmentalist who supports the current EPA requirements has suggested that automakers may find it advantageous to focus their attention on an upcoming first-time DOT proposal for MY22-25 fuel economy standards. That tactic could allow industry to achieve compliance flexibility, while avoiding a big battle between EPA and California, this source said.

DOT's upcoming rulemaking is needed because it faced statutory restrictions on issuing vehicle fuel economy requirements more than five years into the future.

The knowledgeable source adds that one possible option to delay the standards is to not complete the mid-term review by April. "Let's say they use more time, and gosh, they are not done with it so they can't make a regulatory determination. [So], they need more time [to decide], and they can't give the autos sufficient lead time [to comply] . . . then they have to delay the start" of MY22 requirements "a year or two."

Also, the source says if EPA wants to change the requirements, an extensive environmental impact statement under the National Environmental Policy Act may be

required, adding more time to the process. -- *Dawn Reeves* (dreeves@iwpnews.com) & *Doug Obey* (dobey@iwpnews.com)

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